GURCHARAN SINGH BACHITTAR SINGH

v.

PENGUASA, TEMPAT TAHANAN PERLINDUNGAN KEMUNTING, TAIPING & ORS & ANOTHER APPEAL

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABDUL MALEK AHMAD JCA
MOKHTAR SIDIN JCA
[CIVIL APPEALS NO: W-01-267-96 & NO: W-01-290-96]
30 DECEMBER 1999

PREVENTIVE DETENTION: *Extension order - Validity - Detention under s. 8(1) Internal Security Act 1960 - Detention extended by 'extension order' under s. 8(7) - Grounds for detention in extension order - Whether to be stated in statement under s. 11(2)(b) of Act - Whether could be implied - Whether to be furnished to detainee - Whether grounds for detention in extension order same as grounds for detention in original order - Section 11(2)(b) of Act - Applicability - Whether only applicable when extension made on different grounds or partly on different grounds - Internal Security Act 1960, ss. 8(1) & (7), 11(2)(b)(i), (ii) & (iii), 81(3)*

The plaintiff was detained for a period of two years by a detention order ('initial order') made by the Minister under s. 8(1) of the Internal Security Act 1960 ('the Act'). The written statement issued to the plaintiff in accordance with the requirement of s. 11(2)(b) of the Act showed that the initial order was grounded upon the need to prevent the plaintiff "from acting in a manner prejudicial to the security of Malaysia". Subsequently, the Minister issued an 'extension order' under s. 8(7) of the Act, and extended the plaintiff's detention for another two years. However, before the expiry of the extension order, the Minister, acting under s. 81(3) of the Act, cancelled that order and released the plaintiff from detention.

The plaintiff claimed that he had been illegally detained under the extension order as that order was invalid having contravened s. 8(7) of the Act. According to the plaintiff, the written statement as issued to him under the extension order contained only the allegations of fact but not the grounds of detention, and, since the proviso to s. 8(7) provided that a detainee like him ought to be furnished with a written statement of the grounds and allegations under s. 11(2)(b) of the Act if the Minister had issued an extension order on different grounds or partly on different grounds from the grounds cited in the original order, the extension order had contravened s. 8(7) and was therefore

invalid and null and void. It was the plaintiff's stand that the fact that no ground was stated in the extension order meant that that order was made on different grounds or on partly different grounds from the ones in the initial order.

The learned trial judge, upon the purported admission of the defendants that the extension order had stated no grounds for the detention, and in any case subscribing to the plaintiff's argument aforesaid, ruled that the extension order was null and void, and awarded the plaintiff damages of RM1 for wrongful detention. Dissatisfied with the decision, both the plaintiff and the defendants appealed.

Held:
Per NH Chan JCA

[1] The ground or reason for the plaintiff's detention under s. 8(1) of the Act, which was to prevent him from acting in a manner prejudicial to the security of Malaysia, was not given in the statement issued pursuant to the extension order. It could, however, be inferred when the allegations in the statement referred to the activities of the plaintiff as being prejudicial to the security of Malaysia.

[2] The initial order had been extended for a further period of two years on the same ground or reason as the one on which that initial order was made. In both the initial order and the extension order the plaintiff was detained solely on the ground or reason that his detention was necessary to prevent him from taking part in activities that were prejudicial to the security of Malaysia.

[3] The proviso to s. 8(7) only applies where the duration of a detention order has been extended "on grounds different from those on which the order was originally made; or partly on the same grounds and partly on different grounds". It is only by that proviso that a detainee would have the same rights under s. 11 as if the order extending the original detention order was a fresh order so that the benefits of the rights that are found in s. 11(2) would be available to him too.

[3a] Since the ground that was given for the plaintiff's continued detention in the extension order was the same as the ground in the initial order, the proviso to s. 8(7) would not apply. It was, therefore, not required for the plaintiff to be furnished with a written statement of the grounds and allegations under s. 11(2)(b). The defendants' appeal, in the result, must be allowed whilst the the plaintiff's appeal against the award for damages must necessarily fail.

Per Mokhtar Sidin JCA (concurring)

[1] There is nothing in the agreed statement of facts to show that the defendants had agreed that the extension order did not state the grounds for detention. The learned judge had erred when he made the assumption that there was an admission by the defendants that the extension order did not have any grounds. There was no such admission.

[2] If it is true that the extension order here did not state any ground, then one must fall back on the initial order to see the grounds for detention. It cannot be assumed that the extension order was on different grounds or partly on different grounds.

[3] The written statement issued pursuant to the initial order set out in detail the activities of the appellant which led the Minister coming to the conclusion that there were grounds to detain the appellant. The grounds, the allegations of facts and the charges were stated therein and the statement is therefore a statement as required under s. 11(2) of the Act. According to the statement, the ground of the plaintiff's detention was that his activities were prejudicial to the security of Malaysia. That was also the ground used for his continued detention under the extension order. Since the continued detention was on the same ground there was no necessity to supply him with the statement under s. 11(2) as stated by the proviso to s. 8(7).

[3a] Since the plaintiff was detained under the initial order and the extension order solely on the ground that his activities were prejudicial to the security of Malaysia, the learned judge had therefore erred when he held that there was no ground given in the extension order.

[4] The only way to release a detainee whose detention is still subsisting is by way of a cancellation order. The cancellation order is certainly not an admission of error or mistake and is not to be taken as *prima facie* evidence that the detention order or extension order is unlawful or invalid as concluded by the learned judge. Therefore, until he was released by the cancellation order, the detention of the plaintiff under the extension order was lawful and valid.

Per Abdul Malek Ahmad JCA (dissenting)

[1] Reading the provisions of s. 8(7) of the Act, there is no suggestion at all that where the grounds are the same in the extension order as in the initial order, they need not be stated as they are implied. That being so, the grounds for the detention have to be stated in the extension order irrespective of whether they are the same as, different from, or partly the same and partly different from, the grounds for detention in the initial order.

[2] It ought to be stressed that "purposes" and "grounds" are two different things. The purposes are as stated in s. 8(1) of the Act but the grounds for detention must be given in a statement in writing as provided for in s. 11(2)(b)(i) of the Act together with the allegations of facts and other particulars as stated in subparas (ii) and (iii) of the same paragraph. Accordingly, the words *"the detention of any person is necessary with a view ..."* in s. 8(1) of the Act are not the grounds of detention but only the purposes for the detention. Also, when the words *"acting in any manner prejudicial to the security of Malaysia"* appear in both the initial order and the extension order, they do not qualify as a ground for detention but only as a purpose for the detention.

[3] The right to make representations cannot be understated. The proviso to s. 8(7) of the Act makes it imperative that the grounds for detention must be stated for all extension orders, so that the person detained after the expiry of the detention order will be able to know whether he can make representation at all based on the grounds stated in the extension order whether they are the same as, different from, or partly the same as and partly different from, the grounds for detention in the detention order.

[4] Since the grounds for detention have not been stated in the extension order, I would agree with the learned trial judge that the extension order was invalid. Likewise, I have no reason to disagree with the learned trial judge on the issue of damages.

[Plaintiff's appeal dismissed and defendants' appeal allowed by majority decision.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Plaintif telah ditahan untuk selama dua tahun di bawah satu perintah tahanan ('perintah pertama') yang dibuat oleh Menteri di bawah Akta Keselamatan Dalam Negeri 1960 ('Akta'). Kenyataan bertulis yang diberi kepada plaintif mengikut keperluan s. 11(2)(b) Akta menunjukkan bahawa alasan penahanan plaintif adalah bagi menghalangnya dari "bertindak dengan cara yang memprejudiskan keselamatan Malaysia". Berikutnya, Menteri mengeluarkan satu 'perintah lanjutan' di bawah s. 8(7) Akta dan melanjutkan tempoh penahanan plaintif untuk dua tahun lagi. Bagaimanapun, sebelum tempoh perintah lanjutan tamat, Menteri, bertindak di bawah s. 81(3) Akta, membatalkan perintah tersebut dan melepaskan plaintif dari tahanan.

Plaintif mendakwa bahawa beliau telah dikenakan tahanan salah di bawah perintah lanjutan kerana perintah tersebut tidak sah kerana menyanggahi s. 8(7) Akta. Mengikut plaintif, kenyataan bertulis yang diberikan kepadanya di bawah perintah lanjutan hanya mengandungi pengataan fakta tetapi tidak alasan bagi penahanannya, dan, oleh kerana proviso kepada s. 8(7) memperuntukkan bahawa seseorang tahanan sepertinya wajib diberikan kenyataan bertulis yang mengandungi alasan penahanan dan pengataan fakta di bawah s. 11(2) Akta jika Menteri mengeluarkan perintah lanjutan atas sebab-sebab yang berbeza atau atas sebab-sebab yang sebahagiannya berbeza dari apa yang dikemukakan di dalam perintah pertama, maka perintah lanjutan telah melanggar s. 8(7) dan ianya dengan itu adalah tak sah dan batal. Adalah menjadi pendirian plaintif bahawa fakta bahawa perintah lanjutan tiada menyebut apa-apa alasan bermakna perintah itu dibuat atas alasan yang berbeza atau yang berbeza sebahagiannya dari alasan-alasan di dalam perintah pertama.

Hakim bicara bijaksana, dengan merumuskan bahawa defendan-defendan telah mengaku bahawa perintah lanjutan tidak menyatakan apa-apa alasan bagi penahanan, dan walau apapun dengan menyetujui hujah plaintif di atas, memutuskan bahawa perintah lanjutan adalah tak sah dan batal, dan mengawardkan gantirugi sebanyak RM1 kepada plaintif kerana penahanan salah. Berasa tidak puas hati dengan keputusan, kedua-dua plaintif dan defendan merayu.

Diputuskan:
Oleh NH Chan HMR

[1] Alasan atau sebab penahanan plaintif di bawah s. 8(1) Akta, yang mana adalah untuk menghalangnya dari bertindak dengan cara yang memprejudiskan keselamatan Malaysia, tidak dikemukakan di dalam kenyataan yang dikeluarkan berikutan perintah lanjutan. Bagaimanapun, ia boleh diandaikan apabila pengataan-pengataan di dalam kenyataan merujuk kepada aktiviti-aktiviti plaintif yang dikatakan memprejudiskan keselamatan Malaysia.

[2] Perintah pertama telah dilanjutkan untuk tempoh dua tahun lagi atas alasan atau sebab yang sama yang mengasaskan perintah pertama tersebut. Dalam kedua-dua perintah pertama dan perintah lanjutan plaintif telah ditahan semata-mata atas alasan atau sebab bahawa penahanannya perlu untuk menghalangnya dari berkecimpung di dalam aktiviti-aktiviti yang memprejudiskan keselamatan Malaysia.

[3] Proviso kepada s. 8(7) hanya terpakai bilamana tempoh sesuatu perintah tahanan di lanjutkan "atas alasan-alasan yang berbeza dari alasan-alasan bagi perintah yang pertama; atau atas alasan-alasan yang sebahagiannya berbeza dari alasan-alasan bagi perintah yang pertama". Ianya hanya disebabkan proviso tersebut bahawa seseorang tahanan mempunyai hak-hak di bawah s. 11 seolah-olah perintah yang melanjutkan tahanan yang asal itu adalah satu perintah yang baru yang berakibat faedah-faedah yang berbangkit dari hak-hak yang diperolehi pada s. 11(2) akan juga menjadi terakru kepada orang tahanan berkenaan.

[3a] Oleh kerana alasan yang diberi bagi melanjutkan penahanan plaintif di dalam perintah lanjutan adalah sama seperti alasan di dalam perintah pertama, proviso kepada s. 8(7) tidak terpakai. Ianya, dengan itu, bukanlah menjadi tuntutan bahawa plaintif harus diberikan kenyataan bertulis yang mengandungi alasan-alasan dan pernyataan-pernyataan di bawah s. 11(2). Dengan yang demikian, rayuan defendan adalah dibenarkan, sementara rayuan plaintif terhadap award gantirugi pula semestinyalah ditolak.

Oleh Mokhtar Sidin HMR (menyetujui)

[1] Tiada apa-apa di dalam penyata fakta yang dipersetujui yang menunjukkan bahawa defendan bersetuju bahawa perintah lanjutan tidak menyatakan apa-apa alasan penahanan. Hakim bijaksana silap bila membuat andaian bahawa terdapat pengakuan di pihak defendan bahawa perintah lanjutan tidak mengandungi apa-apa alasan. Pengakuan sedemikian tidak wujud.

[2] Jika benar bahawa perintah lanjutan tidak menyatakan apa-apa alasan, maka seorang harus berpaling kepada perintah pertama untuk melihat alasan-alasan penahanan. Ianya tidak boleh diandaikan bahawa perintah lanjutan dibuat atas alasan yang berbeza atau yang berbeza sebahagiannya.

[3] Kenyataan bertulis yang dibuat berikut perintah pertama mengemukakan dengan terperinci aktiviti-aktiviti plaintif yang menyebabkan Menteri membuat rumusan bahawa terdapat alasan-alasan untuk menahan plaintif. Alasan, pernyataan fakta dan pertuduhan semuanya terdapat di situ dan dengan itu kenyataan berkenaan adalah kenyataan seperti yang dikehendaki di bawah s. 11(2) Akta. Mengikut kenyataan, alasan penahanan plaintif adalah bahawa aktiviti-aktivitinya memprejudiskan keselamatan Malaysia. Itulah juga alasan yang digunakan untuk penahanan lanjutnya di bawah perintah lanjutan. Oleh kerana penahanan lanjut itu berdasarkan alasan yang sama, tidak ada keperluan untuk memberikan plaintif kenyataan di bawah s. 11(2) seperti yang diperuntukkan oleh proviso kepada s. 8(7).

[3a] Oleh kerana plaintif telah ditahan di bawah perintah pertama dan perintah lanjutan semata-mata atas alasan bahawa aktiviti-aktivitinya memprejudiskan keselamatan Malaysia, hakim bijaksana telah silap dalam memutuskan bahawa tidak ada alasan diberikan di dalam perintah lanjutan.

[4] Satu-satunya jalan untuk melepaskan seorang tahanan di mana penahanannya masih berkuatkuasa ialah dengan cara perintah pembatalan. Perintah pembatalan jelas bukan satu pengakuan tentang satu kesilapan dan tidak boleh diambil sebagai keterangan *prima facie* bahawa sesuatu perintah tahanan atau perintah lanjutan itu tidak sah sebagaimana yang dirumuskan oleh hakim bijaksana. Oleh itu, sehingga beliau dilepaskan melalui perintah pembatalan, penahanan plaintif di bawah perintah lanjutan adalah sah dan teratur.

Oleh Abdul Malek Ahmad HMR (tidak menyetujui)

[1] Membaca peruntukan s. 8(7) Akta, tidak terdapat apa-apa pun cadangan bahawa di mana alasan-alasan di dalam perintah lanjutan dan perintah pertama adalah sama, maka alasan-alasan tersebut tidak perlu dinyatakan kerana ianya boleh diandaikan. Dengan hal yang demikian, alasan-alasan bagi penahanan mesti dinyatakan di dalam perintah lanjutan tidak kira samada alasan-alasan tersebut sama seperti, berbeza dari, atau sebahagiannya sama dan sebahagiannya berbeza dari, alasan-alasan bagi penahanan di dalam perintah pertama.

[2] Harus ditekan bahawa "tujuan" dan "alasan" adalah dua perkara yang berbeza. Tujuan adalah seperti yang dinyatakan di dalam s. 8(1) Akta tetapi alasan bagi penahanan mesti diberikan melalui kenyataan bertulis sebagaimana diperuntukkan dalam s. 11(2) Akta serta pengataan-pengataan fakta dan butir-butir lain seperti yang diperuntukkan oleh

perenggan-perenggan kecil (ii) dan (iii) seksyen kecil tersebut. Ianya mengikut, perkataaan-perkataan *"the detention of any person is necessary with a view …"* di dalam s. 8(1) Akta bukanlah alasan bagi penahanan tetapi hanyalah tujuan bagi penahanan. Juga, apabila perkataan-perkataan *"acting in any manner prejudicial to the security of Malaysia"* timbul di dalam kedua-dua perintah pertama dan perintah lanjutan, perkataan-perkataan tersebut bukan merupakan alasan bagi penahanan tetapi hanyalah tujuan bagi penahanan.

[3] Hak untuk membuat representasi tidak boleh diperkecilkan. Proviso kepada s. 8(7) Akta mewajibkan setiap perintah lanjutan untuk menyatakan alasan-alasan penahanan, supaya orang yang ditahan selepas berakhirnya tempoh perintah tahanan, boleh mengetahui samada beliau boleh membuat apa-apa representasi berdasarkan alasan-alasan yang diberikan di dalam perintah lanjutan samada alasan-alasan tersebut sama seperti, berbeza dari, atau sebahagiannya sama dan sebahagiannya berbeza dari, alasan-alasan bagi penahanan di bawah perintah tahanan.

[4] Oleh kerana alasan-alasan bagi penahanan tidak dinyatakan di dalam perintah lanjutan, saya bersetuju dengan hakim bicara bijaksana bahawa perintah lanjutan adalah tak sah. Saya juga tiada sebab untuk tidak bersetuju dengan hakim bijaksana berhubung isu gantirugi.

[Rayuan plaintif ditolak dan rayuan defendan dibenarkan melalui keputusan majoriti.]

Case(s) referred refeered to:

Aw Ngoh Leang v. Inspector General of Police & Ors [1993] 1 CLJ 373 ***(refd)***

Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia [1969] 2 MLJ 129 ***(refd)***

Mohd Amin Mohd Yusoh v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1995] 1 CLJ 94 ***(refd)***

Legislation referred to:

Federal Constitution, art. 151

Internal Security Act 1960, ss. 8(1), (5), (7)(a), (b), (c), 11(1), (2)(a), (b)(i), (ii), (iii), 12(1), 13(1), 81(3)

For the plaintiff - Karpal Singh (Gobind Singh Deo with him); M/s Karpal Singh & Co

For the defendants - Zulkifli Bakar SFC (Kamaludin Md Said & Mohd Naser Disa

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S5-21-150-1994]

Reported by WA Sharif

JUDGMENT

NH Chan JCA:

I have had the advantage of reading the judgment in draft of My Lord Mokhtar Sidin JCA and I agree with him that the appeal of the plaintiff should be dismissed and the appeal of the defendants allowed.

Gurcharan Singh (the plaintiff) was a detainee under the Internal Security Act 1960 (ISA). He was an airman in the Royal Malaysian Air Force where he served as an aircraft technician. He was cashiered from the air force before he became a detainee under the ISA. He was detained for two years by a detention order dated 3 November 1989 made by the Minister for Home Affairs under s. 8(1) of the Act. Section 8(1) reads:

> 8(1) If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to **the security of Malaysia** or any part thereof or to **the maintenance of essential services therein** or to **the economic life thereof**, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years. (emphasis supplied)

Under s. 8(1) there are three grounds or reasons for which a person can be detained under the ISA. These grounds or reasons for detaining a person are necessary, according to the ISA, to prevent such a person from acting in a manner that would be prejudicial to **the security of Malaysia** or to **the maintenance of essential services in the country** or to **the economic life of the country.** So that, if the Minister thinks that the detention of the person is necessary for any one of those three grounds or reasons, he can make an order for that person's detention for up to two years under the ISA. Thus, one ground or reason for a person's detention by the Minister is to prevent him from acting in a manner that would be prejudicial to the security of Malaysia. Another ground or reason for his detention is to prevent him from acting in any manner prejudicial to the maintenance of essential services in the country. And the third ground or reason for the Minister to detain a person under the ISA is to prevent him from acting in any manner prejudicial to the economic life of the country.

The material part of the detention order (as translated) that affects the plaintiff in the present case reads:

> WHEREAS I am satisfied that this Order is necessary to be issued against the person named below with a view of preventing him from acting in any manner prejudicial to:

(a) the security of Malaysia,

~~(b) the maintenance of essential services in Malaysia,~~

~~(c) the economic life of Malaysia.~~

As can be seen from this document, grounds (b) and (c) in the text of the order have been deleted. This clearly shows that the detention order was made against the plaintiff solely on ground (a) which was that the Minister was satisfied that his detention was necessary for preventing him from acting in any manner prejudicial to the security of Malaysia.

Following his detention, a detainee is entitled to make representations against the detention order to an advisory board under s. 11 of the Act. Section 11(1) and (2) provide:

> 11(1) A copy of every order made by the Minister under section 8(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations against the order to an Advisory Board.
>
> (2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order –
>
> (a) be informed of his right to make representations to an Advisory Board under sub-section (1); and
>
> (b) be furnished by the Minister with a statement in writing –
>
> (i) of the grounds on which the order is made;
>
> (ii) of the allegations of fact on which the order is based; and
>
> (iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board.

Section 11(1) requires a copy of the detention order made by the Minister under s. 8(1) to be served on a detainee and it also entitles the detainee to make representations against the detention order to an advisory board. And, so as to enable the detainee to make his representations against the order to the Advisory Board, the detainee must, at the time when he was served with a copy of the detention order, be informed of his right to make such representations (s. 11(2)(a)). At the same time he must also be furnished by the Minister with a statement in writing of the grounds on which the order was made (s. 11(2)(b)(i)), the allegations of fact on which the order was based (s. 11(2)(b)(ii)), and any other particulars that the Minister might wish to let him have (s. 11(2)(b)(iii)).

As required by s. 11(2)(b) the plaintiff was furnished with a written statement of the grounds on which the detention order was made and the allegations of fact on which the order was based. This document (the translation of it) reads:

STATEMENT UNDER SECTION 11(2)(b)
INTERNAL SECURITY ACT 1960

Name of Detainee: GURACHARAN SINGH S/O BACHITTAR SINGH @ GURU

Identity Card Number: 704531 (T)

GROUNDS FOR DETENTION

That you, GURACHARAN SINGH A/L BACHITTAR SINGH @ GURU, since the month of November 1986 up to October 1988, had involved yourself actively in an espionage activity for a foreign nation against Malaysia where in a knowing and voluntary manner you had traded classified information concerning the Armed Forces of Malaysia to an intelligence officer from an intelligence agency in Singapore. Your action is not only high treason towards the nation but is also prejudicial to the security of Malaysia.

Strictly speaking, the written statement under s. 11(2)(b) should give (i) the grounds on which the detention order was made, and (ii) the allegations of fact on which the detention order was based. The grounds on which the detention order was made were the grounds that were given for his detention under s. 8(1). But in the present case, only the allegations of fact were given in the statement. It merely said that he had been involved in activities that were prejudicial to the security of Malaysia. The ground or reason for his detention under s. 8(1) which was to prevent him from acting in that manner as it would be prejudicial to the security of Malaysia was not given in the statement. It could, however, be inferred when the allegations in the statement referred to the activities of the plaintiff as being prejudicial to the security of Malaysia.

On 31 October 1991, the Deputy Minister for Home Affairs acting under s. 8(7) of the Act made an order directing that the duration of the detention order on the plaintiff be extended for a further period of two years starting from 3 November 1991. Section 8(7) of the Act allows the Minister to do that. It reads:

8(7) The Minister may direct that the duration of any detention order or restriction order be extended for such further period, not exceeding two years, as he may specify, and thereafter for such further periods, not exceeding two years at a time, as he may specify, **either** –

(a) on the same grounds as those on which the order was originally made;

(b) **on grounds different from those on which the order was originally made; or**

(c) **partly on the same grounds and partly on different grounds:**

Provided that if a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under section 11 as if the order extended as aforesaid was a fresh order, and section 12(1) shall apply accordingly. (emphasis supplied)

It is plain that the proviso to this subsection applies only to a detention order which is extended on different grounds (s. 8(7)(b)) or partly on different grounds (s. 8(7)(c)). It is only when the duration of a detention order is extended on different grounds from those on which the order was originally made (as in (b)), or partly on different grounds (as in (c)) that the detainee is allowed under s. 11 to make representations to the Advisory Board against the extended detention order as if the extended order was a fresh order. However, if the duration of the detention order is extended solely on the same grounds as those on which the order was originally made (s. 8(7)(a)), which is the present case, then the proviso to sub-s. (7) would not apply.

The material part of the Deputy Minister's order directing that the plaintiff's detention be extended for a further period of two years starting from 3 November 1991 reads (as translated):

WHEREAS on 3rd November 1989 with a view of preventing the person named below from acting in any manner prejudicial to:

(a) the security of Malaysia,

~~(b) the maintenance of essential services of Malaysia,~~

~~(c) the economic life of Malaysia,~~

a Detention Order had been issued under section 8(1) of the Internal Security Act, 1960, ordering the person named below to be detained for two years commencing from 3rd November 1989.

	Name	Identity Card Number
FHQ/0171	GURCHARAN SINGH A/L BACHITTAR SINGH	481221-10-5317

AND WHEREAS I am satisfied that with a view of preventing the abovenamed person from acting in any manner prejudicial to:

(a) the security of Malaysia,

~~(b) the maintenance of essential services in Malaysia,~~

~~(c) the economic life of Malaysia,~~

it is necessary for the period of the Detention Order to be extended.

As can be seen from this document, grounds (b) and (c) in the text of this order have been deleted, so that the sole ground or reason for the extension of the period of the detention order on the plaintiff was ground (a) (which was for preventing him from acting in any manner prejudicial to "the security of Malaysia") which was the same ground as the one in the original detention order. In other words, the plaintiff's original detention order had been extended for a further period of two years on the same ground or reason as the one on which the detention order was originally made. In both the original detention order and the extended detention order the plaintiff was detained solely on the ground or reason that his detention was necessary to prevent him from taking part in activities that were prejudicial to the security of Malaysia.

On 2 February 1993 the Deputy Minister for Home Affairs cancelled the detention order on the plaintiff under s. 81(3) of the Act which took effect on 5 February 1993 and he was released. The plaintiff then brought the present proceedings against the defendants claiming damages for false imprisonment. He claims that his extended detention from 3 November 1991 until his release on 5 February 1993 was unlawful because he was not furnished with a written statement of the grounds on which the extended detention order was made and the allegations of fact on which the extended order was based. The court below allowed his claim but awarded him damages of $1. Hence the appeal by both the plaintiff and the defendants to the Court of Appeal.

The sole ground (reason) given for the plaintiff to be further detained for another two years was the same ground (reason) as the one given for his detention in the original detention order, namely, for preventing him from being involved in activities which were prejudicial to **the security of Malaysia**. In other words, his detention was extended for a further two years "on the same grounds as those on which the order was originally made" (under s. 8(7)(a)). It is only in a case where the duration of a detention order has been extended "on grounds different from those on which the order was originally made; or partly on the same grounds and partly on different grounds" (s. 8(7)(b) or (c)) that the proviso to sub-s. (7) of s. 8 applies. It is only by that proviso to that subsection that a detainee would have the same rights under s. 11 as if the order extending the original detention order was a fresh order so that the benefit of the rights that are found in s. 11(2) would be available to him too. Therefore, unless s. 11 applies (and in my judgment I hold that it does not

apply to the present case because the extended order was made on the same ground as that on which the original order of detention was made), there was no requirement to furnish the plaintiff with a written statement of the grounds on which the extended order was made and the allegations of fact on which the order was based (under s. 11(2)(b)(i) and (ii)). Here, in the present case, there was no need to supply the grounds on which the extended detention order was made (under s. 11(2)(b)(i)) nor the allegations on which the order was based (under s. 11(2)(b)(ii)) all over again as that had already been supplied to him when the original detention order was made. Since the ground (reason) that was given for his continued detention in the extended detention order was the same as the ground (reason) in the original detention order, the proviso to sub-s. 7 of s. 8 would not apply to the plaintiff in the present case. It was, therefore, not required for the plaintiff (whose detention was extended for the same reason or ground as the reason or ground in the original detention order) to be furnished with a written statement of the grounds and allegations under s. 11(2)(b).

For s. 11(2) to apply when a detention order is extended under s. 8(7), the extension must be made on different grounds or partly on different grounds. It will not apply, as in the present case, when a detention order is extended on the same grounds as the grounds on the original detention order.

The appeal of the defendants is allowed with costs here and in the court below. In the result the appeal of the plaintiff against the award for damages of $1 must necessarily fail. His deposit will go to the defendants to account of their taxed costs.

Mokhtar Sidin JCA:

There are two appeals in respect of this case. The first appeal is by the plaintiff in the court below who appealed against the award made by the learned trial judge. The second appeal is by the defendants against the whole decision of the learned judge. Both appeals were taken together but we heard the appeal by the defendants first. For matter of convenience we would refer the parties as plaintiff and the defendants as in the court below.

To understand the issue it is better for me to set out the facts. There was a brief statement of agreed facts as exhibited in exh. P1 (p. 53 of the Record of Appeal No. W-01-290-96, hereinafter referred to as the record). The plaintiff was detained under s. 8(1) of the Internal Security Act 1960 (hereinafter referred to as the Act) by an order, of the Minister of Home Affairs dated 3 November 1989 for a period of two years commencing from 3 November 1989 (hereinafter referred to as the initial order). On 31 October 1991 the Deputy Minister of Home Affairs by an order extended the detention of the plaintiff

for a further period of two years commencing from 3 November 1991 (hereinafter referred to as the extension order). Before the expiry of the extension order the Deputy Minister of Home Affairs by a cancellation order dated 2 February 1993 cancelled the detention of the plaintiff whereby he was released on 5 February 1993.

On 29 October 1994, after one year eight months of his release, the plaintiff filed a writ of summons. In his statement of claim the plaintiff prayed for the following orders:

(i) a declaration that the order dated 31 October 1991 issued by the Deputy Minister of Home Affairs extending the detention of the plaintiff was null and void and of no effect; and

(ii) damages for unlawful detention of the plaintiff from 31 October 1991 until 5 February 1993 and interest thereon.

It was common ground that the initial order was valid and the detention of the plaintiff under that order was lawful. It was also common ground that the extension order dated 31 October 1991 was issued pursuant to s. 8(7) of the Act.

The issue before the court was whether the detention of the plaintiff from 3 November 1991 to 5 February 1993 under the extension order was unlawful and if so, is he entitled to damages. The date 3 November 1991 was taken from the extension order itself and as such the date 31 October 1991 as stated in the statement of claim was wrong since the plaintiff has conceded that his detention under the initial order dated 3 November 1989 which expired on 2 November 1991 was lawful.

In his statement of claim the plaintiff claimed that the extension order did not state the grounds for extending the detention of the plaintiff or did not specify the same grounds as in the initial detention order dated 2 January 1989. This contravened s. 8(7) of the Act.

The defendants in their statement of defence denied the claim by the plaintiff and averred that the extension order was valid. The extension order was in accordance with s. 8(7) of the Act. Further, the second defendant acted *bona fide* when he issued the extension order. On the alternative, defendants' defence was that the plaintiff's claim is contrary to the law.

It is to be noted that this case is unique in that this writ was issued long after the plaintiff was released from detention. Further, this is the first time that an appeal has come to this court to determine whether the extension order is invalid or unlawful on the grounds stated in the statement of claim. We

have been informed by counsel that there are several decisions in the High Court, some of which had been cited before us and are awaiting the decision of this appeal. We were also told that there are no authorities available in the Court of Appeal or the Federal Court in respect of this point.

In this case the plaintiff was detained under s. 8(1) of the Act through the initial order dated 3 December 1989 which is found at pp. 59 to 61 of the record. Before the expiry of that order the Deputy Minister of Home Affairs by an extension order dated 31 October 1991 extended the detention of the plaintiff for a further period of two years commencing from 3 November 1991. This order is at pp. 63 to 66 of the record. This order was purportedly issued under s. 8(7) of the Act. Anyway, before the expiry of the extension order the Deputy Minister by a cancellation order dated 2 February 1993 cancelled the detention of the plaintiff. This order was issued under s. 81(3) of the Act. This order is found at p. 67 of the record. The plaintiff was then released from detention.

It is not in dispute and conceded by counsel for the plaintiff that the proviso to s. 8(7) would not be applicable where the extension order is based on the same grounds as the initial order. It would only be applicable where an extension order is based on different grounds or partly on different grounds from the grounds as stated in the initial order.

The first issue before us is where no ground is stated in the extension order then it must be assumed that the grounds are different or partly on different grounds from the one in the initial order as contended by the counsel for the plaintiff. That being the case the proviso to s. 8(7) shall operate. The failure to comply will nullify the extension order. This contention by the learned counsel found favour with the learned judge. The learned judge found that there were no grounds in the extension order and held that the extension order was invalid and as such the detention of the plaintiff under the extension order was unlawful.

In my view the contention by counsel for the plaintiff which was favoured by the learned judge is stretching it a bit too far. It must be remembered that the order we are talking about was the extension order. It was an extension order of an initial order. When one talks about an extension of something it is an extension of the original whereby whatever is contained in the original is applicable unless otherwise stated. To me that is the natural meaning of the word extension. The *Concise Oxford Dictionary* gives the meaning of extension as: "1. the act or an instance of extending; the process of being extended. 2. prolongation; enlargement. 3. a part enlarging or added on to a main structure or building. 4. an additional part of anything. ... 6. an additional

period of time, esp. extending allowance for a project etc. ...". In the present case the extension was the extension of the detention of the plaintiff under the initial order. Now the relevant provisions of the Act are as follows:

Section 8(7) of the Act provides:

> (7) The Minister may direct that the duration of any detention order or restriction order be extended for such further period, not exceeding two years, as he may specify, and thereafter for such further periods, not exceeding two years at a time, as he may specify, either -
>
> (a) on the same grounds as those on which the order was originally made;
>
> (b) on grounds different from those on which the order was originally made; or
>
> (c) partly on the same grounds and partly on different grounds:
>
> Provided that if a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under section 11 as if the order extended as aforesaid was a fresh order, and section 12(1) shall apply accordingly.

Section 11 provides:

> 11. Representations against detention order.
>
> (1) A copy of every order made by the Minister under section 8(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations against the order to an Advisory Board.
>
> (2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order -
>
> (a) be informed of his right to make representations to an Advisory Board under subsection (1); and
>
> (b) be furnished by the Minister with a statement in writing -
>
> (i) of the grounds on which the order is made;
>
> (ii) of the allegations of fact on which the order is based; and
>
> (iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board.
>
> (3) [Not relevant].

The relevant provision in respect of s. 12 is sub-s. (1) where it provides:

> 12. Report of Advisory Board.
>
> (1) Whenever any person has made any representations under section 11(1) to an Advisory Board, the Advisory Board shall, within three months of the date on which the representations are received by it, or within such longer period as the Yang di-Pertuan Agong may allow, consider the representations and make recommendations thereon to the Yang di-Pertuan Agong.

The relevant provision in respect of s. 13 is sub-s. (1) which provides:

> 13. Review.
>
> (1) Every order or direction made or given by the Minister under section 8(1), (5) or (7) or under section 10 shall, so long as it remains in force, be reviewed not less often than once in every six months by an Advisory Board:
>
> Provided that in the case of a detention order against which representations have been made the first of such reviews, whether of a detention order made under section 8(1) or of a detention order extended under section 8(7) to which the proviso to the last mentioned subsection applies, shall be held not later than six months after the completion of the hearing of the representations by the Advisory Board to which they were made.

In the present case, the extension order was an extension of the initial order. The wordings of the proviso to s. 8(7) of the Act makes it clear that when an extension order is based on different grounds or partly on different grounds then that order is deemed to be a fresh detention order. Such order is not an extension order but an initial order for the purpose of the Act. For that purpose s. 11 of the Act shall come into operation as if it is an initial order. This is important so as to enable a detainee to prepare and make his representations to the advisory board under s. 12 of the Act. The failure to observe this will be fatal. On the other hand when the extension order is on the same grounds as the initial order then ss. 11 and 12 of the Act ceased to have effect and instead s. 13 of the Act will come into play immediately. If it transpired or revealed during a review under s. 13 that the extension order is based entirely on different or partly on different grounds then there is a flaw in the extension order for not complying with the proviso to ss. 8(7), 11(2) and 12 of the Act. That is the scheme of the Act. In this case it is clear to me that the plaintiff had served some fifteen months of the extension which means that at least one review under s. 13 had been carried out. The plaintiff did not complain nor was any evidence been adduced to show that the grounds for the extension order were different or partly different from the one in the initial order. In my view it is clear that the plaintiff knew that the grounds for the extension order were the same as in the initial order.

Thus to say that when no ground was stated in the extension order it means that the extension order was based on different grounds or partly on different grounds is in my view stretching it a bit too far. In my view the normal and natural meaning of an extension order is an extension of the initial order in entirety unless otherwise stated. It means whatever grounds stated in the initial order are applicable to the extension order unless different grounds or partly on different grounds are stated as provided for by s. 8(7). It should be remembered that the extension here is the extension of the length of his detention under the Act. If it is true that the extension order here did not state any ground, I am of the view that one must fall back to the initial order to see the grounds for detention. It cannot be assumed that the extension order was on different grounds or partly on different grounds.

Was there really no ground given (stated) in the extension order? It is clear to me that the plaintiff was first detained under s. 8(1) of the Act. Section 8(1) provides as follows:

> 8. Power to order detention or restriction of persons.
>
> (1) If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner **prejudicial to the security of Malaysia or any part thereof** or **to the maintenance of essential services therein** or **the economic life thereof,** he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years. (emphasis made).

In my view the Minister of Home Affairs can issue a detention order under the Act against any person on any of the three grounds specified therein, namely:

(a) acting in any manner prejudicial to the security of Malaysia or part thereof; or

(b) acting in any manner prejudicial to the maintenance of essential services therein; or

(c) acting in any manner prejudicial to the economic life thereof.

As can be seen from the initial order as exhibited at pp. 59 to 62 of the record, these three grounds are stated in the first preamble which reads as follows:

> BAHAWASANYA saya adalah berpuashati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut di bawah ini dengan tujuan hendak mencegah beliau daripada melakukan perbuatan dengan apa-apa cara yang memudaratkan:

(a) keselamatan Malaysia,

(b) penyelenggaraan (maintenance) perkhidmatan-perkhidmatan perlu dalam Malaysia;

(c) kehidupan ekonomi Malaysia.

[Roughly the English translation is as follows:

WHEREAS I am satisfied that this Order is necessary to be issued against the person named below with a view of preventing from acting in any manner prejudicial to:

(a) the security of Malaysia,

(b) the maintenance of essential services in Malaysia;

(c) the economic life of Malaysia.]

It is to be noted that in that order, paras (b) and (c) had been deleted which means that the plaintiff was detained on ground (a) that was his activities were prejudicial to the security of Malaysia. From this it is clear to me that was the ground for his detention. In the extension order dated 31 October 1991 (pp. 64 and 65 of the record) the relevant paragraphs are worded as follows:

BAHAWASANYA pada 3 haribulan November 1989 dengan tujuan hendak mencegah orang yang tersebut di bawah dan bertindak dengan cara yang memudaratkan:

(a) keselamatan Malaysia,

(b) penyelenggaraan (maintenance) perkhidmatan-perkhidmatan perlu dalam Malaysia;

(c) kehidupan ekonomi Malaysia,

suatu Perintah Tahanan telah dibuat di bawah seksyen 8(1) Akta Keselamatan Dalam Negeri, 1960, yang mengarahkan bahawa orang yang tersebut di bawah hendaklah ditahan selama dua tahun mulai dan 3 haribulan November 1989.

	Nama	Nombor Kad Pengenalan
FHQ/0171	GURACHARAN SINGH A/L BACHATAR SINGH	481221-10-5317

DAN BAHAWASANYA saya adalah berpuashati bahawa dengan tujuan hendak mencegah orang yang tersebut di atas dan bertindak dengan apa-apa cara yang memudaratkan:

(a) keselamatan Malaysia,

(b) penyelenggaraan (maintenance) perkhidmatan-perkhidmatan perlu dalam Malaysia,

(c) kehidupan ekonomi Malaysia,

adalah perlu bahawa tempoh Perintah Tahanan itu di lanjutkan.

[Its translation:

WHEREAS on 3rd November 1989 with a view of preventing the person named below from acting in any manner prejudicial to:

(a) the security of Malaysia,

(b) the maintenance of essential services in Malaysia,

(c) the economic life of Malaysia,

a Detention Order had been issued under section 8(1) of the Internal Security Act, 1960, ordering the person named below to be detained for two years commencing from 3rd November 1989.

	Name	Identity Card No.
FHQ/0171	GURACHARAN SINGH A/L BACHATAR SINGH	481221-10-5317

AND WHEREAS I am satisfied that with a view of preventing the abovenamed person from acting any any manner prejudicial to:

(a) the security of Malaysia,

(b) the maintenance of essential services in Malaysia,

(c) the economic life of Malaysia,

it is necessary the period of the Detention Order be extended.]

Again, it is noted that paras. (b) and (c) had been deleted in both preambles which means that the ground in para. (a) is applicable.

My reading of both the initial order and the extension order, with the deletion of paras. (b) and (c), means that the plaintiff was detained under the initial order and the extension order solely on the ground that his activities were prejudicial to the security of Malaysia. That was the ground for his detention under the initial order and it was the same ground in the extension order. In my view it is not correct to say there was no ground given or stated in the extension order.

It was contended by counsel for the plaintiff that the ground I have stated are not grounds as required under the Act. It was submitted and found favour by the learned judge below that the grounds were as found at pp. 61 and 62 of the record.

It is clear to me that the statement at pp. 61 and 62 is a statement required under s. 11(2) of the Act. It sets out in detail the activities of a detainee (in this case the plaintiff) which led the Minister coming to the conclusion that there were grounds to detain the detainee. The grounds were stated in the order and the statement. The statement also contained allegations of facts and the charges. The purpose of this statement was to enable the plaintiff to prepare his case against the charges and the allegations made against him when he made his representations before the Advisory Board. The statement at pp. 61 and 62 were nothing more but detailed particulars of his activities. The ground of his detention was his activities were prejudicial to the security of Malaysia. To me that was the ground of his detention in the initial order. The same ground was also used for his continued detention under the extension order. Since the continued detention was on the same ground there was no necessity to supply him with the statement under s. 11(2) anymore as stated by the proviso to s. 8(7).

The learned judge in his judgment at p. 16 of the record said:

> Learned Federal Counsel for the defendants has argued that if the grounds of detention for the extension order are similar to that of the initial detention order, there is no necessity for the Minister to expressly state his grounds in the extension order. The contention finds no acceptance from this court. Applying the principle as stated above, a detainee must be made aware of whether he can exercise his rights to make representation. Before he can do so, it must be disclosed to him on what grounds he is further detained. Only if he is further detained on different grounds or partly on different grounds a right is granted to him to make representations to the Advisory Board. Therefore, to enable him to decide, the extension order must list the grounds, whether it is the same, different or partly different.
>
> **In this case, as admitted by the defendants, the extension order states no grounds.** Under such circumstances the extension is therefore invalid rendering any detention of the plaintiff thereunder unlawful. (emphasis made).

From the above it appears to me that the learned trial judge was of the assumption that there was an admission by the defendants that there was no ground given in the extension order. This assumption was challenged by the defendants on appeal where at para. 2 of the memorandum of appeal it is stated as follows:

2. Yang Arif Hakim telah khilaf dari segi fakta dan undang-undang apabila memutuskan bahawa tidak terdapat alasan bagi penahanan Responden bagi tempoh masa tersebut.

At the trial no oral evidence had been adduced by either party in respect of the extension order. All were done by way of statement of agreed facts and submissions. There is nothing in the agreed statement of facts to show that the defendants had agreed that the extension order did not state the ground. In the court below the Federal Counsel appearing on behalf of the defendants submitted that "P3 ada tahanan atas alasan sama (P3 there was detention on the same ground)". As explained before us by the Senior Federal Counsel the ground for extending the detention of the plaintiff in the extension order was the same as in the initial order. What was not given to the plaintiff was the statement similar to the one at pp. 61 and 62 of the record. As such the learned judge had erred when he made the assumption that there was admission by the defendants that the extension order did not have any ground. There was no such admission.

For the above reasons I found that the learned judge had erred when he held that there was no ground given in the extension order.

In his judgment the learned trial judge made adverse findings in respect of the cancellation order (p. 67 of the record). In his judgment (at p. 28 of the record) the learned judge said:

> Judging from the facts of this case, there is no *mala fide* on the part of the honourable Deputy Minister in issuing the unlawful extension detention order. *The only error that caused its invalidation may be an oversight on the part of the honourable Deputy Minister. Immediately, upon realising of this error, the extension detention order was cancelled and the plaintiff released henceforth.* Under these circumstances, surely the injured feelings of the plaintiff could not be said to have been heightened by such *bona fide* deeds of the defendants. ... (emphasis made).

In other words the learned judge concluded that when the cancellation order was issued it was an admission on the part of the Deputy Minister that there was an error when the extension order was issued. I could not understand how the learned judge came to that conclusion.

The cancellation order was issued under s. 81(3) of the Act which provides:

> 81.(3) Any order or regulation made or any direction or instruction given under this Act may at any time during its continuance be cancelled by the person empowered to make the order or regulation or to give the direction or instruction, but without prejudice to the previous validity thereof or to anything done thereunder or to the power of the person to make a fresh order of regulation or give a fresh direction or instruction under those provisions.

In my view the cancellation order issued under this section has the effect of terminating a detention of a detainee before the expiry of the detention order or the extension order. This could happen after a recommendation made under s. 12 of the Act or where the Minister on his own for one reason or another decided to release a detainee before the expiry of the detention order or the extension order. There is no other way to terminate the detention and release a detainee when a detention order or extension order thereto is still subsisting. The only way to release a detainee whose detention is still subsisting is by way of a cancellation order. It is certainly not an admission of error or mistake or it is to be taken as a *prima facie* evidence that the detention order or extension order is unlawful or invalid as concluded by the learned judge. This is confirmed by the section itself when it provides "but without prejudice to the previous validity thereof" which means a cancellation order does not have the effect of invalidating an order previously made.

As such the learned judge had erred when he concluded that the Deputy Minister cancelled the extension order when the Deputy Minister realised there was an error. In my view the extension order was valid throughout until its cancellation.

For the above reasons I am of the view that the detention of the plaintiff under the extension order was lawful and valid until he was released by the cancellation order. For that reason the finding of the learned judge that the detention of the plaintiff was unlawful should be set aside.

In view of my decision that the detention of the plaintiff was lawful, there is no necessity for me to consider the damages to be awarded to the plaintiff.

For the reasons above-stated, I will allow the appeal by the defendants with costs here and the court below. The decision of the learned trial judge is set aside.

Abdul Malek Ahmad JCA:

The crucial issue for consideration before us is whether a person unlawfully detained under the Internal Security Act 1960 (hereinafter "the Act") can sue the authorities for compensation.

The appellant in Civil Appeal No. W-01-267-96 who is the respondent in Civil Appeal No. W-01-290-96 (hereinafter "the appellant") was detained for two years with effect from 3 November 1989 pursuant to a detention order (hereinafter "the detention order") of the same date issued by the Minister of Home Affairs (hereinafter "the Minister"). The grounds for detention and the allegations of fact were stated therein.

The said grounds for detention were as follows:

PENYATAAN DI BAWAH SEKSYEN 11(2)(b) AKTA KESELAMATAN DALAM NEGERI 1960

Nama Orang Tahanan : GURACHARAN SINGH A/L BACHITTAR SINGH @ GURU

No. Kad Pengenalan : 704531 (T)

ALASAN-ALASAN UNTUK TAHANAN

Bahawa kamu, GURACHARAN SINGH A/L BACHITTAR SINGH @ GURU, sejak bulan November 1986 hingga Oktober 1988, telah melibatkan diri secara aktif dalam satu aktiviti perisikan negara asing terhadap Malaysia yang mana dengan secara sedar dan relahati telah memperdagangkan maklumat-maklumat terperingkat mengenai Angkatan Tentera Malaysia kepada seorang pegawai risik daripada sebuah badan perisikan negara Singapura. Tindakan kamu itu bukan sahaja merupakan satu pengkhianatan besar terhadap negara, tetapi juga boleh memudaratkan keselamatan Malaysia.

Loosely translated, the English version is as follows:

STATEMENT UNDER SECTION 11(2)(b) INTERNAL SECURITY ACT 1960

Name of Detainee : GURACHARAN SINGH S/O BACHITTAR SINGH @ GURU

Identity Card Number: 704531 (T)

GROUNDS FOR DETENTION

That you, GURACHARAN SINGH A/L BACHITTAR SINGH @ GURU, since the month of November 1986 up to October 1988, had involved yourself actively in an espionage activity for a foreign nation against Malaysia where in a knowing and voluntary manner you had traded classified information concerning the Armed Forces Malaysia to an intelligence officer from an intelligence agency in Singapore. Your action is not only high treason towards the nation but is also prejudicial to the security of Malaysia.

On 31 October 1991, the Deputy Minister of Home Affairs (hereinafter "the second respondent") extended the appellant's detention for another two years through an extension order (hereinafter "the extension order") with effect from 3 November 1991. No grounds for detention were stated in the extension order.

The extension order was cancelled by the second respondent on 2 February 1993 by virtue of a cancellation order (hereinafter "the cancellation order") with effect from 5 February 1993. The appellant was accordingly released from detention.

It is the appellant's contention, on these facts which are not disputed by the respondents in Civil Appeal No. W-01-267-96, who are also the appellants in Civil Appeal No. W-01-290-96, that he was under unlawful detention and falsely imprisoned from 3 November 1991 to 5 February 1993, for which he claims damages and costs, as no grounds for detention were stated in the extension order. In effect, he has no quarrel with the detention order as the grounds for detention were in fact stated therein.

To my mind, four provisions in the Act are of particular importance to the issue at hand. The first is sub-s. (1) of s. 8 of the Act, under which the detention order was made, which states:

> (1) If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.

The second is sub-s. (7) of s. 8 of the Act, pursuant to which the extension order was made, which provides:

> (7) The Minister may direct that the duration of any detention order or restriction order be extended for such further period, not exceeding two years, as he may specify, and thereafter for such further periods, not exceeding two years at a time, as he may specify, either:
>
> (a) on the same grounds as those on which the order was originally made;
>
> (b) on grounds different from those on which the order was originally made; or
>
> (c) partly on the same grounds and partly on different grounds:
>
> Provided that if a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under section 11 as if the order extended as aforesaid was a fresh order, and section 12(1) shall apply accordingly.

The third and fourth are sub-ss. (1) and (2) of s. 11 of the Act which reads:

> (1) A copy of every order made by the Minister under section 8(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations against the order to an Advisory Board.
>
> (2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order -

(a) be informed of his right to make representations to an Advisory Board under subsection (1); and

(b) be furnished by the Minister with a statement in writing -

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board.

Leading Senior Federal Counsel for the respondents argued that for an extension order which is based on the same grounds for detention as in the detention order, the grounds for detention need not be stated in the extension order as they are implied.

I find this line of argument quite difficult to accept for nowhere is this suggested in sub-s. (7) of s. 8 of the Act. In my view, reading and rereading the said provision, whether the grounds for detention in the extension order are the same as, different from, or partly the same as and partly different from, the grounds for detention in the detention order, the grounds for detention must be stated before the proviso to that subsection can come into effect. There is certainly no suggestion at all that where the grounds for detention are the same in the extension order as in the detention order, they need not be stated as they are implied. At the very least, the person under detention should be informed in writing that the grounds for detention in the extension order are the same as the grounds for detention in the detention order even if they are not so stated specifically.

And I am in full agreement with two other High Court decisions, although not binding in this court, on the same point.

The first is *Mohd Amin bin Mohd Yusoh v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1995] 1 CLJ 94 where the learned trial judge said:

> The defendant must be made to know the grounds of his detention so that he could decide whether he should exercise his inherent right under section 11 of the ISA by treating the second detention order as a fresh order and consequently make representations to the Advisory Board as envisaged under section 12(1) of the ISA. Put in another way, since the defendant was not furnished with the statement of the grounds on which the second detention order was made and the allegations of fact on which the second detention order was made, it would render nugatory the rights specially conferred on him by those provisions. Furthermore, the right of making representations to the Advisory Board would be rendered meaningless if the applicant was in no position to know the grounds on which the second detention order was made.

The second is Penang High Court Criminal Application No. 44-22-94 (unreported) where it was ruled:

> ... before the applicant can even consider whether he should make any representations to the advisory board in exercise of his rights under the proviso to section 8(7) and under section 11, he has first to know what grounds the extension order was made. In the circumstances where he is not furnished with the statement of the grounds on which the extension order is made and of the allegations of fact on which the extension order is based, it would render nugatory the rights specifically conferred upon him by those provisions of the ISA and, in my view, it would also amount to a breach of Clause (1) of Article 151 of the Constitution which enjoins the determining authority to inform the detainee of the grounds for his detention and the allegations of fact on which the detention order is based, and further gives him the right to make representations against the detention order to the advisory board.

It is material to observe that prior to 1 September 1971, the original s. 9 of the Act provided that where any person is detained under any order made sub-s. (1) of s. 8 of the Act, he shall, in accordance with art. 151 of the Constitution, as soon as may be, be informed of the grounds for his detention, be informed of the allegations of fact on which the order is based, and be given the opportunity of making representations against the order. The said s. 9 of the Act was wholly repealed by Act A61 and the reason given in the relevant Bill for its deletion was that it was redundant to s. 11 of the Act.

I would, therefore, agree with the learned trial judge here that the grounds for detention have to be stated in the extension order irrespective of whether they are the same as, different from, or partly the same and partly different from, the grounds for detention in the detention order. I would like to stress the point that "purposes" and "grounds" are two different things. The purposes are as stated in sub-s. (1) of s. 8 of the Act but the grounds for detention must be given in the statement in writing as provided for in sub-para. (i) of para. (b) of sub-s. (2) of s. 11 of the Act together with the allegations of fact and other particulars as stated in sub-paras. (ii) and (iii) of that same paragraph.

Accordingly, the words "the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof" in sub-s. (1) of s. 8 of the Act are definitely not the grounds for detention but only the purposes for the detention.

My view is strengthened by the use of the word "purposes" in sub-s. (5) of s. 8 of the Act which begins with "If the Minister is satisfied that for any of the purposes mentioned in sub-s. (1) ...". So when the words "acting in any manner prejudicial to the security of Malaysia" appear in both the detention order and the extension order, they do not qualify as a ground for detention but only as a purpose for the detention.

The same confusion had actually arisen in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129 where a strong five men bench of the Federal Court (Azmi LP, Ong Hock Thye CJ (Malaya), Suffian, Gill and Ali FJJ) had through Suffian FJ (as he then was) said:

> It seems to me that there has been confusion in this matter by Dato' Marshall's frequent use throughout his arguments of the word "grounds". In my judgment, the words "with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein" in section 8(1)(a) of the Internal Security Act do not indicate the grounds for a person's detention; they indicate its purpose or purposes. It is true that the grounds for a person's detention must be given, but grounds are quite distinct from purposes. The Minister has given the grounds for the appellant's detention in Exhibit A1. These grounds are quite distinct from the purposes stated in the order of detention and when the two are read together there is in my opinion no conflict or discrepancy between them. Put in different words, what the grounds supplied and the order of detention say is this: because (grounds) you the appellant have since 1957 consistently acted in a manner prejudicial to the security of Malaysia, the Yang di-Pertuan Agong is satisfied that it is necessary to direct that you be detained with a view to (purposes) preventing you from acting in any manner prejudicial to the security of Malaysia or to the maintenance of public order or to the maintenance of essential services in Malaysia. It is true that the grounds use a phrase which occurs in the order of detention and in section 8 of the Act and Dato' Marshall has fastened on the alleged discrepancy between the language of the grounds and of the order of detention. But in my judgment there is no need for the grounds to be identical with any or all of the purposes of detention. The grounds supplied could be in words totally different from the statement of the purposes of detention.

The question of making representations after being detained forms part and parcel of the Act and sub-s. (1) of s. 11 of the Act makes it very clear that a person served with an order under sub-s. (1) of s. 8 of the Act shall be entitled to make representations against the order to an advisory board. Subsection (2) of s. 11 of the Act provides that for that purpose, the person detained shall, at the time of the service of the order on him, be informed of his right to make representations, and be furnished by the Minister with a statement in writing of the grounds on which the order is made, the allegations of fact on which the order is based, and such other particulars as he may in the opinion of the Minister reasonably require to make the representations.

This is well and good for a detention order under sub-s. (1) of s. 8 of the Act. What about an extension order, as in this appeal, under sub-s. (7) of s. 8 of the Act? The proviso says that if a detention order is extended on different grounds or partly on different grounds, the person to whom it relates shall have the same rights under s. 11 of the Act as if the order extended was a fresh order.

Does this then mean that where the grounds for detention in the extension order are the same as the grounds for detention in the detention order, then the person detained is not entitled or loses his entitlement to make representations? This appears to be the only conclusion one can draw from the relevant provisions in the Act but this is the more reason why it is imperative that the grounds for detention must be stated for all extension orders so that the person detained after the expiry of the detention order will be able to know whether he can make any representations at all based on the grounds for detention stated in the extension order whether they are the same as, different from, or partly the same as and partly different from, the grounds for detention in the detention order.

The right to make representations cannot be understated. In *Aw Ngoh Leang v. Inspector General of Police & Ors* [1993] 1 CLJ 373; [1993] 1 MLJ 65, when the appellant was detained, he was only given one copy of the prescribed form for making representations against the detention, contrary to the prescribed rules. His application for *habeas corpus* was dismissed in the High Court and he appealed. The Supreme Court held that any disobedience of the mandatory requirements for the protection of the rights of a person detained without trial would vitiate an order for detention made even if no real prejudice had ensued to the detainee.

Since the grounds for detention have not been stated in the extension order, I would agree with the learned trial judge that the extension order is invalid. Having held that the respondents are liable for issuing an invalid extension order, I now deal with the issue of damages.

For effect, it is necessary to reproduce what the learned trial judge said on this point. He said:

> On the issue of damages, the plaintiff claims as follows:
>
> Damages for false imprisonment at the Kamunting Detention Centre, Taiping from 31.10.1991 till 5.2.1993.
>
> In his testimony before this Court, the plaintiff states that he was a trained aircraft technician attached to the Royal Malaysian Air Force (RMAF) earning a sum of RM1,103.00. He was however dismissed from the RMAF before he was detained under the initial detention order. Subsequent to his release from detention on the 5.2.1993, he was engaged as an odd-job worker until 11/2 years later when he secured his present permanent employment with an initial salary of RM2,500.00. This testimony is obviously tendered with the view of claiming for loss of earnings during the period of his unlawful confinement. Such a claim, being special damages, must be specifically proved – see the case of *Zainuddin v. Liew Pak Fun & Anor* [1962] 28 MLJ 247.

In this case however, there is no evidence to indicate that it was the defendants' acts that resulted in the plaintiff's loss of his previous employment. As the plaintiff himself has admitted, he was already dismissed from the RMAF before his detention. Thus at the time of his detention by the defendants he was unemployed. Being unemployed before his detention, there is no evidence to prove that he has suffered any specific pecuniary loss in salary resulting from his detention.

The plaintiff attempts to explain that he was dismissed while he was under custody prior to the initial detention order. This deprived him of an opportunity to defend his dismissal from the RMAF. In such a situation, more so the plaintiff's claim for loss of earnings should not be directed at the defendants. He should make his claim against the authority or authorities that brought him into custody and restrict his movements at that material time. There is no evidence to implicate the defendants were the ones who were responsible for detaining him prior to the initial detention order. Even if it is based on the initial detention order, the plaintiff has no ground in succeeding when his claim in this case is not based on this order but on the extension order.

Under special damages therefore, this Court makes no award due to the plaintiff's failure to plead for the same as well as on lack of justification.

Though the plaintiff suffered no physical injury during the period of false imprisonment, Encik Karpal Singh submits that aggravated damages should be awarded to the plaintiff. This as defined by Lord Diplock in *Broome v. Cassell & Co. Ltd.* [1972] AC 1027 @ 1124 as follows:

> Compensation for the injured feelings of the plaintiff where his sense of injury resulting from the wrongful physical act is justifiably heightened by the manner in which or motive for which the defendant did it.

Though this may be awarded to compensate the plaintiff's injured feelings arising out of the defendants' tortious act but, there must be justification that it was heightened by the manner or motive for which the defendants did it. In assessing whether to grant such an award, all circumstances of the case must be taken into account, and one crucial factor is the character of the plaintiff – see the case of *Ansell v. Thomas & Anor.* [1974] Crim. LR 31.

Judging from the facts of this case, there is no *mala fide* on the part of the honourable Deputy Minister in issuing the unlawful extension detention order. The only error that caused its invalidation may be an oversight on the part of the honourable Deputy Minister. Immediately, upon realising of this error, the extension detention order was cancelled and the plaintiff released henceforth. Under these circumstances, surely the injured feelings of the plaintiff could not be said to have been heightened by such *bona fide* deeds of the defendants. Further, the plaintiff's character is also questionable. He was alleged to have traded our nation's security defences to another country for self gratification. Such treasonable acts certainly do no warrant any award of aggravated damages.

> False imprisonment is actionable *per se*; no actual damage need to be proved. In deciding the quantum for this, the entire facts of this case must be considered. As stated previously, there is no malice on the part of the 2nd defendant in executing the extension detention order. It was done in good faith, and the error in the detention order, at most is caused by an oversight. Immediately upon realising this, the extension order was cancelled and the plaintiff was set at liberty. Consider this against the grounds for the plaintiff's detention as disclosed in the initial detention order. He was accused of selling the country's secrets and of attempting to recruit spies. These activities are certainly against national interest, and the plaintiff can be charged for high treason where the penalty, if found guilty is death. Because of an error in the procedure he was set free, much earlier than he would have. Instead of resting his good fortune, he chose to turn against the government claiming damages on a technical error. Such action is deplorable, and to display its utmost displeasure and revulsion towards the plaintiff's claim, this Court hereby awards a sum of RM1.00 as nominal damages to the plaintiff.
>
> Further, there should also be no order as to costs and interest as claimed.

I have no reason to disagree with the reasoning of the learned trial judge on the issue of damages. My finding is that the appellant has been illegally detained under the extension order, but is of the same view as the learned trial judge that there has been no *mala fide* on the part of the second respondent in making the extension order. I would, therefore, not make any order for damages other than the nominal damages of RM1 awarded by the learned trial judge.

As for the detention order, the appellant is not disputing it and this certainly proves that he is not really contesting the grounds upon which his detention is based although the charges as such have not been formally proved against him. This confirms my view that he is not entitled to any award for damages just because the second respondent has not stated the grounds for detention in the extension order which has now rendered it unlawful.

Since I agree with the learned trial judge on both the question of liability and the award of nominal damages, I would dismiss both Civil Appeal No. W-01-267-96 and Civil Appeal No. W-01-290-96 with each party to bear their own costs. The deposits are to be refunded to the respective appellants.